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PATENT APPLN. NO. 10/566,655  
RESPONSE UNDER 37 C.F.R. §1.111

PATENT  
NON-FINAL

IN THE CLAIMS:

1. (currently amended) A nonaqueous electrolyte secondary battery which has a positive electrode containing a positive active material, a negative electrode containing a negative active material and a nonaqueous electrolyte solution, said secondary battery being characterized in that said positive active material comprises a lithium transition metal complex oxide ~~containing at least Ni and Mn as transition metals and having a layered structure and comprising, in addition to said at least Ni and Mn represented~~ by a chemical formula:  $\text{Li}_a\text{Mn}_x\text{Ni}_y\text{Co}_z\text{O}_2$  (a, x, y and z satisfy  $0 \leq a \leq 1.2$ ,  $x + y + z = 1$ ,  $0 < x \leq 0.5$ ,  $0 < y \leq 0.5$  and  $z \geq 0$ ), and further comprises zirconium in the amount by mole of from 0.1 % to ~~[[5]]~~ 1 %, based on the total amount of said transition metals.

2. (original) The nonaqueous electrolyte secondary battery as recited in claim 1, characterized in that said positive electrode in a fully charged state has a potential of at least 4.5 V (vs. Li/Li<sup>+</sup>).

3. (currently amended) A nonaqueous electrolyte secondary battery which has a positive electrode containing a positive active material, a negative electrode containing a graphite material as a

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negative active material and a nonaqueous electrolyte and which is designed to be charged with an end-of-charge voltage of at least 4.4 V, said secondary battery being characterized in that said positive active material comprises a lithium transition metal complex oxide ~~containing at least Ni and Mn as transition metals and having a layered structure and comprising, in addition to said~~ at least Ni and Mn represented by a chemical formula:  $\text{Li}_a\text{Mn}_x\text{Ni}_y\text{Co}_z\text{O}_2$  (a, x, y and z satisfy  $0 \leq a \leq 1.2$ ,  $x + y + z = 1$ ,  $0 \leq x \leq 0.5$ ,  $0 \leq y \leq 0.5$  and  $z \geq 0$ ), and further comprises zirconium in the amount by mole of from 0.1 % to ~~[[5]]~~ 1 %, based on the total amount of said transition metals.

4. (canceled)

5. (previously presented) The nonaqueous electrolyte secondary battery as recited in claim 1, characterized in that a ratio in capacity of said negative electrode to said positive electrode (negative electrode/positive electrode) in their portions opposed to each other is in the range of 1.0 - 1.3.

6. (canceled)

PATENT APPLN. NO. 10/566,655  
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7. (previously presented) The nonaqueous electrolyte secondary battery as recited in claim 1, characterized in that said lithium transition metal complex oxide contains substantially the same amount of Ni and Mn.

8. (previously presented) The nonaqueous electrolyte secondary battery as recited in claim 1, characterized in that said positive active material has a specific surface area of 0.1 - 2.0 m<sup>2</sup>/g.

9. (previously presented) The nonaqueous electrolyte secondary battery as recited in claim 3, characterized in that a ratio in capacity of said negative electrode to said positive electrode (negative electrode/positive electrode) in their portions opposed to each other is in the range of 1.0 - 1.3.

10. (canceled)

11. (previously presented) The nonaqueous electrolyte secondary battery as recited in claim 3, characterized in that said lithium transition metal complex oxide contains substantially the same amount of Ni and Mn.

PATENT APPLN. NO. 10/566,655  
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12. (previously presented) The nonaqueous electrolyte secondary battery as recited in claim 3, characterized in that said positive active material has a specific surface area of 0.1 - 2.0 m<sup>2</sup>/g.

13 - 16. (canceled)